

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

ROBERT F. SMITH, #CV-5130

Petitioner,

v.

CIVIL ACTION NO. 2:19cv135

**HAROLD W. CLARKE, Director,
Virginia Department of Corrections,**

Respondent.

FINAL ORDER

Before the Court is a Petition for a Writ of *Habeas Corpus* filed pursuant to 28 U.S.C. § 2254 and the Respondent's Motion to Dismiss the Petition. In his Petition, the *pro se* Petitioner alleges that the Virginia Parole Board's continued denial of his parole violates his due process rights.

The Petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and Recommendation filed on December 20, 2019, recommends dismissal of the Petition with prejudice. ECF No. 18. On January 2, 2020, the Petitioner timely filed objections to the Report and Recommendation. The Respondent has not responded to the Petitioner's objections and the time to do so has expired.

The Court, having reviewed the record and examined the objections filed by Petitioner to the Report and Recommendation, and having made *de novo* findings with respect to the portions objected to, does hereby **ADOPT** and **APPROVE** the findings and recommendations set forth in


the Report and Recommendation filed December 20, 2019. It is, therefore, **ORDERED** that the Respondent's Motion to Dismiss, ECF No. 14, be **GRANTED**, and that the Petition, ECF No. 1, be **DENIED** and **DISMISSED WITH PREJUDICE**. It is further **ORDERED** that judgment be entered in favor of the Respondent.

Finding that the procedural basis for dismissal of Petitioner's § 2254 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so **within thirty (30) days** from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk shall forward a copy of this Final Order to Petitioner and to counsel of record for the Respondent.

It is so **ORDERED**.



Raymond A. Jackson
United States District Judge

Raymond A. Jackson
United States District Judge

January /0, 2020